

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into this 28 day of June, 2013, by and between:

"Plaintiff/Releasor" MONICA D. GUTIERREZ, a minor, by and through her Guardian-ad-Litem, MICHAEL S. RADCLIFF

"Defendants/Releasees" COUNTY OF LOS ANGELES, a public entity; LOS ANGELES COUNTY FIRE DEPARTMENT, a public entity; RICHARD G. MURRIETTA, an individual; THOMAS R. MERRILL, an individual; RANDALL D. ATANAY, an individual; and DOES 1 through 100, inclusive.

Recitals

- A. On December 6, 2012, Plaintiff/Releasor filed a complaint against the County of Los Angeles and several of its employees ("Defendants/Releasees") in the Superior Court, County of Los Angeles, State of California, case #: BC496865 ("Complaint"), which Complaint alleges negligent, grossly negligent and intentional acts or omissions by Defendants/Releasees caused injury to plaintiff.
- B. Plaintiff/Releasor and Defendants/Releasees agreed to settle the Complaint pursuant to the terms outlined in the terms below. The Parties desire to enter into this Settlement Agreement and Release in order to provide for certain payments in full settlement and discharge of all claims which have, or might be made, by reason of the Incident described in these Recitals, and any other potential claims known or unknown that Plaintiff/Releasor may have against Defendants/Releasees, upon the terms and conditions set forth below.

Agreement

The parties agree as follows:

1.0 Terms

In consideration of the covenants undertaken and releases given herein by Plaintiff/Releasor, Defendants/Releasees shall provide to Plaintiff/Releasor, the following consideration in full and final settlement and release of any and all matters of any kind or nature which were alleged by, or could have been alleged by, Plaintiff/Releasor against the County of Los Angeles and/or any of the Defendants/Releasees:

(a) The County of Los Angeles on behalf of Defendants/Releasees will pay the sum of \$3,800,000.00 to Plaintiff/Releasor, as follows:

- i. A check payable to YARIAN & PATATNAYAN APLC in the amount of \$1,389,055.22 (in compliance and consistent with the Court's order of 5/31/2013 which approved the minor's compromise. See EXHIBIT "A"). Said check to be delivered to YARIAN & PATATANYAN APLC by JULY 12, 2013.

- II. The remainder of the settlement funds shall be disbursed in compliance with the terms and conditions of the Special Needs Trust when the same is approved and signed by the Court.

The amount paid is inclusive of all attorneys' fees and costs.

Periodic payments may be made in a manner consistent with the requisite court order for the minor's compromise relating to the minor's claims as described in the Complaint.

Within five days of the completion of payment as set forth in (a) (i) and (ii), Plaintiff/Releasee is to dismiss the entire complaint with prejudice.

(b) All sums and periodic payments set forth in the section entitled Terms constitute damages on account of personal injuries or sickness, arising from an occurrence, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

Plaintiff/Releasor agrees that she has not received or relied upon any advice or representation from the Defendants/Releasees, or their attorneys, including advice or representation as to the tax effect of this Settlement Agreement and Release. In accordance therewith, Plaintiff/Releasor agree to hold harmless Defendants/Releasees, and their attorneys, from any losses to Plaintiff/Releasor incurred, including any loss by reason of a determination by the Internal Revenue Service or other tax authority that said settlement monies do not constitute, in whole or part, damages on account of personal injury or sickness.

(c) Defendants/Releasees will be responsible for the Medi-Cal lien arising out of the care provided to Monica D. Gutierrez alleged in this action, up to \$37,600.00, the amount of the Medi-Cal lien as of March 28, 2013. Plaintiff/Releasor will be responsible for any Medi-Cal lien over \$37,600.00, and any other medical liens relating to the care provided to Plaintiff/Releasor (including Medicare liens) must be satisfied out of the Settlement Amount. Plaintiff/Releasor will be responsible for any other outstanding lien;

(d) Christopher Gutierrez and Carmen Casillas ("Parents") have previously agreed to waive all claims for future Wrongful Death of Monica D. Gutierrez. Plaintiff's/Releasor's attorney has provided written confirmation acknowledging that the Parents understand their right to sue for wrongful death for the death of Plaintiff/Releasor and that they voluntarily agreed to waive all claims for future wrongful death, or any other interest in connection with the Complaint.

(e) Plaintiff/Releasor agrees to dismiss and waive any claim against Defendants/Releasees related to any possible known or unknown claim related to the allegations of the Operative Complaint. Plaintiff/Releasor agrees also to waive any possible claim for wrongful death by any of the Plaintiff/Releasor.

(f) Plaintiff/Releasor agrees to comply with all the findings and recommendations of the Medicare Set-Aside ("MSA") Analysis to be completed by Defendants/Releasees which will be met with funds taken from the Settlement Amount.

(g) Plaintiff/Releasor agrees to use Atlas Settlements as the broker for any structured

settlement to be utilized in connection with this Settlement Agreement and Release.

(h) This Settlement Agreement and Release must be executed by Plaintiff's/Releasor's Guardian Ad Litem and Plaintiff's/Releasor's attorney.

(i) Plaintiff/Releasor agrees to not file any individual or class action lawsuits against Defendants/Releasees for discrimination, or to be a plaintiff in any connection with any such class action lawsuits that may be filed against Defendants/Releasees, County of Los Angeles, or any of its Departments or employees.

(j) Plaintiff/Releasor is also to provide to Defendants/Releasees a social security number for Monica D. Gutierrez as well as a copy of her birth certificate.

2.0 Release and Discharge

2.1 In consideration of the payments set forth in Section 1, Plaintiff/Releasor hereby completely releases and forever discharges all Defendants/Releasees, including the County of Los Angeles, Murietta, Atanay, and Merrill, and any and all employees, agents, and representatives from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which Plaintiff/Releasor now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Complaint (and all related pleadings) including, without limitation, any and all known or unknown claims for bodily and personal injuries to Plaintiff/Releasor as to any claim they may have or had against Defendants/Releasees, or any future wrongful death claim of Monica D. Gutierrez's representatives or heirs, which have resulted or may result from the alleged acts or omissions of Defendants/Releasees.

2.2 This Settlement Agreement and Release shall also apply to Defendants'/Releasees' past, present and future attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

2.3 This Settlement Agreement and Release, made by Plaintiff/Releasor, shall be a fully binding and complete settlement among Plaintiff/Releasor, Defendants/Releasees, and their assigns and successors. The Parties acknowledge that this Settlement Agreement and Release is contingent upon the Court's approval of the Minor's Compromise. The Parties acknowledge that the Court has already approved the minor's compromise. The parties acknowledge that a petition for approval of a Special Needs Trust is currently pending before the Probate Department of Los Angeles County Superior Court.

2.4 Plaintiff/Releasor acknowledges and agrees that the release and discharge set forth above is a general release. Plaintiff/Releasor expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Plaintiff/Releasor does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiff's/Releasor's decision to enter into this Settlement Agreement and Release.

Plaintiff/Releasor further agrees that Plaintiff/Releasor has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff/Releasor assumes the risk that the facts or law may be other than Plaintiff/Releasor believes. It is understood and agreed to by the Parties that this settlement is a compromise of a disputed claim, and the payments are not to be construed as an admission of liability on the part of the Defendants/Releasees, by whom liability is expressly denied.

2.5 Plaintiff/Releasor hereby waives any and all rights based upon the provisions of *California Civil Code Section 1542* that reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known to him or her, must have materially affected his or her settlement with the debtor."

3.0 Plaintiff/Releasor Right to Payments

Defendants/Releasees and/or its Assignees shall not segregate or set aside any of its assets to fund the payments to Plaintiff/Releasor required herein. Payments hereunder cannot be accelerated, deferred, increased or decreased by Plaintiff/Releasor or her Assignees and no part of the payments called for herein or any assets of the Defendants/Releasees and/or its Assignees is to be subject to execution of any legal process for any obligation in any manner. Furthermore, Plaintiff/Releasor shall not have the power to sell or mortgage or encumber the same, or any part thereof, anticipate the same, or any part thereof, by assignment or otherwise.

4.0 Plaintiff's/Releasor's Beneficiary

Any payments to be made after the death of Monica D. Gutierrez pursuant to the terms of this Settlement Agreement and Release shall be made to such person or entity as shall be designated in writing at the time of settlement by said Plaintiff/Releasor to the Defendants/Releasees or Assignees. If no person or said entity is so designated by Plaintiff/Releasor, or if the person designated is not living at the time of the Plaintiff's/Releasor's death, such payments shall be made to the estate of Monica D. Gutierrez. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Defendants/Releasees or its Assignees. The designation must be in a form acceptable to the Defendants/Releasees or its Assignees before such payments are made.

5.0 Consent to Qualified Assignment

5.1 The Parties hereto acknowledge and agree that Defendants/Releasees may make a "qualified" assignment within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, to the assignee as identified in the requisite court order for the minor's compromise relating to the minor's claims as described in the Complaint. Defendants/Releasees' Assignees' obligation for payments of the Periodic Payments shall be no greater than that of Defendants/Releasees (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation. Such assignment, if made, shall be accepted by Plaintiff/Releasor without right of rejection and shall completely release and discharge Defendants/Releasees from such obligations hereunder as are assigned to its

Assignees.

5.2 The liability and obligations assumed by Defendants'/Releasees' Assignees to make each of the payments in the amount and at the time set forth in this agreement shall be discharged pro tanto upon payment of each amount specified in this agreement. Each payment contemplated in this agreement shall be deemed made upon the mailing of a valid check or electronic transfer in the amount due to the address or bank account so designated in writing by Plaintiff/Releasor unless Plaintiff/Releasor within fourteen (14) days following the due date of any payment notified Defendants'/Releasees' Assignees that any check so mailed was not received; provided that nothing herein shall relieve actual receipt thereof by Plaintiff/Releasor or her successor hereunder. Upon receipt of written notification, Defendants'/Releasee's Assignees shall direct the Annuity Carrier(s) to initiate a stop payment action for such check and upon confirmation that such check was not previously negotiated shall promptly have the Annuity Carrier(s) issue and mail a replacement check.

Defendants'/Releasees hereto expressly understand and agree that upon the qualified assignment being made by Defendants'/Releasees to its Assignees as authorized by this agreement, all of the duties and responsibilities to make the periodic payments otherwise imposed upon Defendants'/Releasees by this agreement shall instead be binding upon Defendants'/Releasees' Assignees, and Defendants'/Releasees shall be released from all obligations to make said periodic payments, and Defendants'/Releasees' Assignees shall at all times remain directly and solely responsible for and shall receive credit for all such payments made to Plaintiff/Releasor. It is further understood and agreed that, upon such a qualified assignment, Defendants'/Releasees' Assignees assumes all of the duties and responsibilities of Defendants'/Releasees to make the periodic payments.

Plaintiff/Releasor agrees that:

(1) Periodic payments under this Settlement Agreement from Defendants'/Releasees' Assignees cannot be accelerated, deferred, increased or decreased by Plaintiff/Releasor.

(2) Defendants'/Releasees' Assignees' obligation for payment of the periodic payments shall be no greater than the obligation of the person or entity originally liable (whether by suit or agreement) for payment and from whom the obligation was assigned.

6.0 Right to Purchase an Annuity

Plaintiff/Releasor agrees that Defendants'/Releasees and/or its Assignees shall have the right to fund its liability to make periodic payments by purchasing a "qualified funding asset", within the meaning of Section 130(d) of the Code, in the form of an annuity policy from an Annuity Carrier as identified in the requisite court order for the minor's compromise relating to the minor's claims as described in the Complaint.

Defendants'/Releasees and/or its Assignees shall be the owner of the annuity policy or policies, and shall have all rights of ownership. Defendants'/Releasees and/or its Assignees may have the Annuity Carrier mail payments directly to Plaintiff/Releasor. Plaintiff/Releasor shall be responsible for maintaining the currency of the proper mailing address and mortality information to Defendants'/Releasees and/or its Assignees.

7.0 Discharge of Obligation

The obligation of Defendants/Releasees and/or its Assignees to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee(s) named. However, if a payment is lost, the Payor, upon notification of such lost check, transfer, or payment, shall reissue said check, transfer, or payment, subject to verification by "stop payment", that the Payee had not negotiated said check, transfer, or payment.

8.0 Attorneys' Fees

Each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with this Settlement Agreement and Release, the matters and documents referred to herein, and all related matters.

9.0 Delivery of Dismissal with Prejudice

Pursuant to the Recitals in this Settlement Agreement and Release, counsel for the Plaintiff/Releasor, shall deliver to counsel for Defendants/Releasees an executed Dismissal with Prejudice of the operative Complaint. Plaintiff/Releasor hereby authorizes counsel for Defendants/Releasees to file said Dismissal with the Court and enter it as a matter of record.

10.0 Novation

In recognition of the obligations of Defendants/Releasees specified above and the Release of all claims by Plaintiff/Releasor, the Parties further agree as follows:

It is agreed that Defendants/Releasees will assign the obligation to make the specified Periodic Payments to its Assignees. The obligation of Defendants/Releasees to make periodic payments shall, by this novation, become the sole and exclusive duty of their Assignees, and the terms and conditions of payments shall remain unchanged in lieu of the substitution of the Assignees for the obligations of Defendants/Releasees.

Execution of the assignment will absolutely and completely discharge Defendants/Releasees from any further payment obligation. If either Assignees or the issuers of the annuity contract purchased by Assignees to make the payment obligation specified above, fail to make payments or become insolvent or bankrupt, Plaintiff/Releasor or Plaintiff's/Releasor's heirs or representatives' sole remedy to enforce payment obligations assigned shall be against either Assignees, guarantor and/or other responsible party other than Defendants/Releasees. Defendants/Releasees will have absolutely no obligations to Plaintiff/Releasor under those circumstances.

11.0 Representation of Comprehension of Document

In entering into this Settlement Agreement and Release, Plaintiff/Releasor represent that Plaintiff/Releasor has relied upon the advice of her attorneys, who are the attorneys of her own choice, concerning the legal and income tax consequences of this Settlement Agreement and Release; that the terms of this Settlement Agreement and Release have been completely read and explained to Plaintiff/Releasor by her attorney; and that the terms of this Settlement Agreement and Release are fully understood and voluntarily accepted by Plaintiff/Releasor.

12.0 Warranty of Capacity to Execute Agreement

Plaintiff/Releasor represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and Release, except as otherwise set forth herein; that Plaintiff/Releasor has the sole right and exclusive authority to execute this Settlement Agreement and Release and receive the sums specified in it; and that Plaintiff/Releasor had not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement and Release.

13.0 Governing Law

This Settlement Agreement and Release shall be construed and interpreted in accordance with the laws of the State of California.

For the protection of the undersigned Plaintiff/Releasor, California law requires the following to appear on this form:

"IT IS UNLAWFUL TO (A) PRESENT OR CAUSE TO BE PRESENTED ANY FALSE OR FRAUDULENT CLAIM FOR THE PAYMENT OF A LOSS UNDER A CONTRACT OF INSURANCE AND (B) PREPARE, MAKE OR SUBSCRIBE ANY WRITING WITH INTENT TO PRESENT OR USE THE SAME, AND TO ALLOW IT TO BE PRESENTED OR USED IN SUPPORT OF ANY SUCH CLAIM. ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS PUNISHABLE BY IMPRISONMENT IN THE STATE PRISON OR BY FINE NOT EXCEEDING FIFTY THOUSAND DOLLARS (\$50,000) OR BOTH."

14.0 Additional Documents

The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement and Release.

15.0 Entire Agreement and Successors in Interest

This Settlement Agreement and Release contains the entire agreement between Plaintiff/Releasor and Defendants/Releasees with regard to the matters set forth in it and shall be binding upon and inure to the benefits of the executors, administrators, personal representatives, heirs, successors and assigns of each.

16.0 Liens and Other Claims

Except as set forth in Section 1.0, Plaintiff/Releasor hereby agrees and acknowledges that she is responsible for any and all liens which exist, may exist, or in the future may exist, on any of the proceeds of the settlement amount. Plaintiff/Releasor warrants that she has advised Defendants/Releasees and their attorneys or agents of any liens of which Plaintiff/Releasor is aware, and

that in the event any claim is made against Defendants/Releasees, or any subsumed health care entity or provider of Defendants/Releasees by any third party on account of a lien which exists, may exist, or in the future may exist, Plaintiff/Releasor agrees to hold harmless, defend and indemnify, if requested, Defendants/Releasees, including the payment of reasonable attorney's fees, for any and all such claims which Defendants/Releasees may be forced to defend. This paragraph applies to, but is not limited to, liens asserted by health care providers, medical insurance carriers, or governmental entities which might have any interest in or claim against the proceeds of this settlement.

17.0 Proof of Living Affidavit

All periodic payments to be paid by the life insurance companies retained by the Defendants/Releasees and/or its Assignees shall be payable to the Monica D. Gutierrez Special Needs Trust. By signing below, Plaintiff/Releasor, Plaintiff's/Releasor's Guardian ad Litem, or Plaintiff's/Releasor's Trustee of the Special Needs Trust agree to complete annually a Proof of Living affidavit that requires a notarized statement by a physician acknowledging the annuitant is still living. These terms are understood and hereby acknowledged.

18.0 Medicare

It is not the purpose of this Settlement Agreement and Release to shift responsibility of medical care in this matter to the Medicare program. Instead, this Settlement Agreement and Release is intended to resolve a dispute between the Plaintiff/Releasor and Defendants/Releasees.

- a) **Conditional Payments.** Plaintiff/Releasor has been advised and fully understands that conditional payment information (any benefits paid by Medicare up to date of settlement), if any, are the responsibility of Plaintiff/Releasor and must be satisfied out of the Settlement Amount.
- b) **Future Medicare Set Aside.** Plaintiff/Releasor and Plaintiff's/Releasor's attorneys shall request the court to order the special needs trust attorney to inquire regarding the necessity of Medicare Set Asides, and if applicable, to order the special needs trust to fund any Medicare Set Aside requirement. Plaintiff/Releasor agrees to indemnify, defend and hold Defendants/Releasees harmless from any action by Medicare seeking payment for future medical expenses for Plaintiff/Releasor.
- c) While it is impossible to accurately predict the need for future treatment, this settlement is based upon a good faith determination of the Parties in order to resolve a questionable claim. The Parties have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider Medicare's interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The Parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement to Medicare or Medicare payments will not render this release void or ineffective, or in any way affect the finality of this liability settlement.

- d) **Hold Harmless.** Plaintiff/Releasor agrees to indemnify, defend and hold Defendants/Releasees harmless from any action by Medicare seeking payment of past, current, or future medical expenses for Plaintiff/Releasor. Plaintiff/Releasor shall further hold Defendants/Releasees harmless from any and all adverse consequences in the event this settlement results in the loss of right to Social Security and/or Medicare benefits in the absence of this Settlement Agreement and Release.

Plaintiff/Releasor: Monica D. Gutierrez, A Minor, By And Through
Her Guardian ad Litem, Michael S. Radcliff

By: Michael S. Radcliff
Michael S. Radcliff
Date: 6-27-2013

JURISDICTION

The parties agree that the Court SHALL retain jurisdiction, pursuant to California Code of Civil Procedure Section 664.6, to enforce the terms and the conditions of this settlement agreement.

19.0 Effectiveness

This Settlement Agreement and Release shall become effective immediately following execution by each of the Parties.

Plaintiff/Releasor: Monica D. Gutierrez, a minor, by and through
her Guardian ad Litem, Michael S. Radcliff

By: Michael S. Radcliff
Michael S. Radcliff
Date: 6-27-2013

Plaintiff/Releasor: Michael S. Radcliff, individually

By: Michael S. Radcliff
Michael S. Radcliff
Date: 6-27-2013

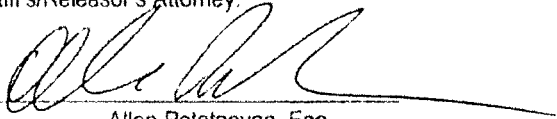
Approved as to form and content:

Plaintiff's/Releasor's Attorney:

By: Levik Yarian
Levik Yarian, Esq.
Date: 6/28/2013

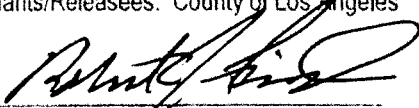
Approved as to form and content:

Plaintiff's/Releasor's Attorney:

By: 
Allen Patatanyan, Esq.

Date: 6/28/2013

Defendants/Releasees: County of Los Angeles

By: 
Robert J. Frick
Director, Professional Liability
Sedgwick CMS, Inc.
Authorized Representative
for the County of Los Angeles

Date: 6/28/2013